

Understanding and Evaluating the New York State Legislature's proposed Budget Process constitutional amendments

By Frank J. Mauro¹

Article 7 of the New York State Constitution sets forth a set of "rules" defining the roles, powers and duties of the Governor and the Legislature in the New York State budget process.² This past Spring, the New York State Legislature gave second passage to one set of amendments to this part of the State Constitution (see Senate Bill S. 1 and its Assembly counterpart A. 2), and first passage to another set of amendments to this part of the State Constitution (see Senate Bill S. 3195 and its Assembly counterpart A. 4630).

As a result of it having been approved by two separately elected legislatures (in 2004 and 2005), the amendments contained in S. 1 will be on the general election ballot this November for consideration by the state's voters.

If the proposed constitutional amendments contained in S. 3195 are to be presented to the voters for their approval or disapproval, they would have to be given second passage by the Legislature elected in 2006. This means that the earliest that these changes could be presented to the voters would be 2007.

While S. 3195 is a little more complicated than it needs to be, it is extremely clear and straightforward in comparison to S.1. Most importantly, S. 3195 tackles the executive-legislative balance of powers issues raised by the Court of Appeals decisions in *New York State Bankers Association v. Wetzler* (1993) and *Silver v. Pataki* and *Pataki v. The Legislature* (2004) in a very direct manner which does not do damage to the concept of the Executive Budget. S. 1, on the other hand, gets at the balance of powers question in a very convoluted, complicated, and inadequately defined way that would make the state budget process even more of a mess than it has been in many recent years.

The current budget process provisions of the State Constitution, as they have been interpreted by The New York State Court of Appeals in the 1993 and 2004 decisions referenced above, create an unacceptable situation in which the Governor can include changes in permanent law in his proposed appropriations bills and put the Legislature in a "take it or leave it" position. For example, the Governor can, in effect, say to the Legislature, you can have school aid my way or not have it at all. The Legislature's only recourse under the current constitutional arrangement is

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² The Governor's line item veto power is set forth in Section 7 of Article 4 of the State Constitution.

to refuse to adopt the Governor's proposed appropriations bills until the Governor agrees to change the statutory language changes that the Legislature finds unacceptable. The Governor says the Legislature can just say "no" until an agreement between the two branches is reached. But this is exactly what has happened in recent years and what critics point to as a failing of the current system.

This situation can be fixed in one of several ways. For example, the constitution could be amended to allow the Legislature, subject to gubernatorial veto, to make changes in the "terms and conditions" including changes in permanent law, that are included in appropriations bills by the Governor. Or, the constitution could be amended to require the Governor to submit changes in permanent law in non-appropriation budget bills rather than in the appropriations bills which the Legislature is prohibited by the Constitution from changing except in regard to the dollar amounts for various items. This latter approach is the one that is proposed by S. 3195.

While many of the critics of S.1 oppose it because it would increase the power of the Legislature in the budget process, I believe that the power of the Legislature should be increased, but that it should be increased in a way that deals directly and clearly with the impact of the 1993 and 2004 Court of Appeals decisions on the balance of powers in the budget process. When I served as Secretary of the Ways and Means Committee in the mid-1980s, the Governor and the Legislature both operated under the understanding that the Legislature could amend the "terms and conditions" language that the Governor included in his proposed appropriations bills and that the Governor could veto those changes if he disagreed with them. That certainly did not create a budget process with a weak or ineffectual Governor nor did it run contrary to the concept of the Executive Budget. I think that the balance of powers in the budget process needs to be changed back to something like that and I believe that the constitutional amendments proposed in S. 3195 would do a decent job in that regard.

S. 1, on the other hand, gets at this dilemma in a roundabout way that would create an even messier budget process than we now have. S. 1 does not limit the Governor's ability to include changes in permanent law in his appropriations bills nor does it authorize the Legislature to make changes in such submissions. It only increases the Legislature's relative power in the budget process by taking the Governor's appropriations bills off the table if they are not all acted on by the start of the state fiscal year and giving the Legislature greater discretion in amending the "contingency budget" that would take effect in such a situation than it has in amending the appropriations bills submitted by the Governor in conjunction with his Executive Budget. But neither S.1, nor the accompanying implementing legislation (S. 2., which was enacted over the Governor's veto language and which will take effect if the amendments to the Constitution proposed by S. 1 are approved by the state), assign responsibility to anyone for preparing the "contingency budget," let alone in a timely fashion. Moreover, S. 1 has internally inconsistent language regarding the contingency budget – referring to it in one sentence as being based on the prior year's appropriations and in another sentence as being based on the prior year's disbursements. And, S. 2 makes the situation even less clear.

S. 1., as explained in this memorandum, is flawed in significant and substantial ways. It does, however, redress (albeit in a perverse and ham-handed way) the imbalance in power in the state's budgetary process that has resulted from the Pataki Administration's aggressive

interpretation of the Constitution as upheld by the New York State Court of Appeals in *Silver v Pataki*, and *Pataki v The Legislature*. In this context, it might have been worth living with the flawed provisions of S. 1. for two years if the Legislature had initiated a further corrective amendment to be presented to the voters in 2007. But S.1, without significant corrections, does not embody an approach which should be made a permanent part of the State Constitution.

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The legal parameters of the New York State Budget Process are described in **Part A** of this memorandum. The ways in which these parameters would be changed, if the voters of the state approve the amendments to the State Constitution proposed by S. 1, are described in **Part B** of this memorandum. **Part C** of this memorandum attempts to set forth the guiding principles of the S1/S2 package, while **Part D** sets forth the shortcomings of this package.

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Part A. Under the State Constitution as it currently stands, the legal parameters of the New York State budget process can be described as follows:

1. The Governor is required to submit an Executive Budget to the Legislature each year.

This requirement is contained in Section 2 of Article 7 of the State Constitution and is phrased as follows: “Annually, on or before the first day of February in each year following the year fixed by the constitution for the election of governor and lieutenant governor, and on or before the second Tuesday following the first day of the annual meeting of the legislature, in all other years, the governor shall submit to the legislature a budget containing a complete plan of expenditures proposed to be made before the close of the ensuing fiscal year and all moneys and revenues estimated to be available therefor, together with an explanation of the basis of such estimates and recommendations as to proposed legislation, if any, which the governor may deem necessary to provide moneys and revenues sufficient to meet such proposed expenditures. It shall also contain such other recommendations and information as the governor may deem proper and such additional information as may be required by law.”

This provision also constitutes the state’s “balanced budget” requirement which is a requirement that the Governor submit a budget that is projected to be balanced on a cash basis. The language establishing this requirement is very indirect and oblique in that it requires the Governor to (a) identify all the expenditures that he thinks should be made before the end of the next fiscal year, (b) identify all the moneys and revenues that he estimates will be available to cover those proposed expenditures, and (c) recommend any legislation which “the governor may deem necessary to provide moneys and revenues sufficient to meet such proposed expenditures.”

2. At the time that he submits his Executive Budget, the Governor is also required to submit a bill or bills containing all the appropriations that he is recommending in the

Executive Budget. These bills are called “appropriations bills” and, as indicated below, the State Constitution limits the ways in which the Legislature can alter (i.e., amend) these bills, and it prohibits the Legislature from acting on other appropriations bills until both houses of the legislature have “finally acted on” the appropriations bills submitted by the Governor in conjunction with the Executive Budget.

3. At the time that he submits his Executive Budget, the Governor is also required to submit any other proposed legislation that he is recommending in the Executive Budget.

These bills are called sometimes called Article 7 bills, even though the appropriations bills described above are also authorized and required by Article 7 of the State Constitution. These non-appropriations budget bills are also sometimes referred to as “language bills.” Unlike the “appropriations bills” submitted by the Governor in conjunction with the executive Budget, the Legislature is not required by the Constitution to act on these “language bills” nor is it limited in how it can alter or amend the Governor’s proposed language (or non-appropriations budget) bills.

4. The Legislature is limited in how it can change the appropriations bills submitted by the Governor.

According to Section 4 of Article 7 of the State Constitution, the Legislature can delete or reduce items of appropriations contained in the appropriations bills submitted by the Governor in conjunction with the Executive Budget, and it can add additional items of appropriations to those bills provided that “such additions are stated separately and distinctly from the original items of the bill and refer each to a single object or purpose.”³ Such additions are subject to the Governor’s line-item veto power under Section 7 of Article 4 of the Constitution. (To facilitate the exercise of the line-item veto power, the Legislature can not, for example, change a proposed \$1 million appropriation to \$2 million. Rather, in this example, it must add a second appropriation for \$1 million for the same purpose as the Governor’s proposed \$1 million appropriation. This eliminates the possibility of a situation of the Governor having to veto his original request in order to veto a legislative increase in that request.)

The NYS Court of Appeals in three recent decisions (*New York State Bankers Assn., Inc. v Wetzler* [1993], *George E. Pataki, as Governor of the State of New York v. New York State Assembly* [2004], and *Sheldon Silver v. George E. Pataki, Governor* [2004]) has construed the term “items of appropriations” to refer to the dollar amount of appropriations and not to the terms and conditions that the Governor might attach to those appropriations in the proposed appropriations bills submitted in conjunction with the executive Budget. Following the Court’s 1993 decision in the “Bankers” case, the Governor began including more and more extensive sets of terms and conditions in his proposed appropriations bills, including various provisions “notwithstanding” portions of permanent statutory law related to proposed appropriations for the life of the appropriation. For example, the Governor has on several occasions attached language to proposed appropriations for aid to public schools changing, for the fiscal year involved, the formulas contained in permanent statutory law. In several recent years, the Legislature has tried to craft ways of circumventing the strictures of the “Bankers” decision. In two of those years,

³ These limitations (and several of the other requirements and procedures described in this memorandum) do not apply to appropriations for the legislature or the judiciary.

this jousting led to lawsuits initiated by the Speaker of the Assembly against the Governor (in regards to the appropriations bills adopted for the 1998-1999 fiscal year) and by the Governor against the Assembly (in regard to the appropriations bills adopted for the 2001-02 fiscal year). In these latter cases, the Legislature argued unsuccessfully that the Governor's proposed changes in permanent law (such as in statutory school aid formulas) should be submitted in non-appropriations budget bills (i.e., "language" bills), which the Legislature is free to ignore or to revise as it chooses. But the Court of Appeals, in the 2004 decisions referred to above, upheld the Governor's argument that he could include changes in permanent law in the appropriations bills as long as those changes in permanent law were related directly to the appropriations being recommended and as long as they only applied for the life of the appropriation involved.

5. The Senate and the Assembly are also prohibited from "considering" any appropriations bills other than the appropriations bills submitted by the Governor in conjunction with the Executive Budget until "all the appropriation bills submitted by the governor shall have been finally acted on by both houses, except on message from the governor certifying to the necessity of the immediate passage of such a bill." This language from Section 5 of Article 7 of the Constitution has given rise to a system of temporary funding bills that has been in place since the mid-1980s. In years when the annual appropriations bills submitted by the Governor have not been adopted by the Legislature (with or without changes) by the beginning of the state fiscal year, temporary funding bills have been adopted to keep the state government operating for temporary periods of a week or two but sometimes for periods as long as six weeks. By virtue of the language of Section 5 of Article 7 of the Constitution, the Legislature can not adopt temporary funding bills on its own. It needs the Governor to at least issue a message of necessity on behalf of such bills but in practice the Governor has also initiated these bills. Under the Constitution as it now stands both the Governor and the Legislature have the ability to stop the state government from operating during such a period - the Governor by refusing to certify "the necessity of the immediate passage of such a bill" and the Legislature (really, either the Senate or the Assembly) by refusing to adopt such a bill in the form that the Governor is willing to certify as needing immediate passage.

6. The Governor may amend his Executive Budget and the accompanying bills within 30 days of submitting them without legislative approval and "...with the consent of the legislature, at any time before the adjournment thereof..." This part of Section 3 of Article 7 of the Constitution is best known for establishing the so-called "30-day amendment" process. But in regard to the Court of Appeals decisions limiting the Legislature's ability to amend the terms and conditions included in the appropriations bills submitted by the Governor, it is the ability of the Governor to submit amendments to his proposed appropriations bills after the 30-day deadline "with the consent of the legislature" that takes on particular importance. In the "Bankers" decision, the Governor signed the contested language changes (language establishing a fee pursuant to which commercial banks would be required to reimburse the state for the costs of their tax audits) into law rather than line item vetoing them. This led the state to argue that "the purpose of article VII, § 4 -- harmony between the legislative and executive branches in implementing the budgetary process -- was achieved inasmuch as the Governor and the Legislature both acted to show their approval of the Audit Fee Provision" thus demonstrating that "the identical measure could have been enacted constitutionally if the Governor had exercised his right to include the provision in the Budget Bill by amendment after its submission

(see, NY Const, art VII, §§ 3, 6) and the Legislature thereafter adopted it." The Court of Appeals disagreed with this reasoning calling it "patently flawed" and opined "That something which is done illegally could have been done legally, of course, does not excuse the illegality." This conclusion gave rise to an approach that has prevailed in most budget adoptions since the "Bankers" decision. Under this approach, the Governor and the Legislature negotiate an agreement and the Governor then resubmits his budget bills to embody the agreed-upon changes. That this approach does not work every year is evidenced by the years in which a full legislative-executive agreement on the budget was most obviously not reached: 1998-99, 2001-02, 2003-04, and 2004-05. In the first and last of these four years, the Legislature was unable to override the Governor's line-item vetoes of many of its additions to the Governor's appropriations bills.

7. Without an agreement by the Governor to "resubmit," the Legislature can not (under the Court of Appeals interpretation of the State Constitution) change the terms and conditions included in the appropriations bills submitted by the Governor in conjunction with the Executive Budget. It can't even change those terms and conditions subject to the approval or veto of the Governor. There is no limit, however, on the ability of the Legislature to add items of appropriations to the Governor's proposed appropriations bills. The Governor can then chose to line-item veto any such additions with which he disagrees and the Legislature is then free to attempt to override any line-item vetoes that he issues.

8. The Legislature is not required to adopt a balanced budget - on either a cash or an accrual (GAAP) basis. In fact, the Legislature is not even required to adopt a budget and it does not do so. And, except for the December 1998 pay legislative pay withholding law, the Legislature isn't actually required to appropriate money for state government operations and aid to local governments. Adopting appropriations bills, and doing so by the beginning of the state fiscal year, are logical not legal requirements. The fact that the Legislature is not required to adopt a budget and that it does not do so had to be addressed when the Governor and the legislative leaders agreed in December 1998 to pass legislation providing for the withholding of legislators' pay until a budget adopted. The result was the inclusion of the following definition in the section (Section 5) of the Legislative Law providing for the compensation of legislators: " 'Legislative passage of the budget', solely for the purposes of this section and section five-a of this article, shall mean that the appropriation bill or bills submitted by the governor pursuant to section three of article seven of the state constitution have been finally acted on by both houses of the legislature in accordance with article seven of the state constitution and the state comptroller has determined that such appropriation bill or bills that have been finally acted on by the legislature are sufficient for the ongoing operation and support of state government and local assistance for the ensuing fiscal year. In addition, legislation submitted by the governor pursuant to section three of article seven of the state constitution determined necessary by the legislature for the effective implementation of such appropriation bill or bills shall have been acted on."

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Part B. The legal parameters described above will be changed in the following ways if the voters adopt the amendments to the State Constitution proposed by S. 1.

1. Senate Bill 1, if approved by the voters in November 2005, would amend Article 7, Section 1 of the State Constitution to require that agency budget requests be made available to the public. Comments: Over the course of the last 20 years, state agencies' "official" budget requests have become increasingly meaningless and uninformative because of the existing Constitutional requirement that copies of those requests must be provided "to the appropriate committees of the legislature" and because of a court ruling that certain portions of the agency budget requests are accessible by the public under the state's Freedom of Information Law. It is unclear to me what impact, if any - good or bad, this proposed change in the Constitution will have on the usefulness of the "official" agency budget requests.

2. Senate Bill 1, if approved by the voters in November 2005, would amend Article 7, Section 2 of the State Constitution to change the due date of the executive Budget to January 15th in all years except years in which a newly elected Governor takes office in which case the due date shall continue to be February 1. Comments: This represents a slight acceleration of the budget process timetable. This change might not have much of a positive impact on the budget process but it also does not seem to do any harm to the process.

3. Senate Bill 1, if approved by the voters in November 2005, would amend Article 7, Section 2 of the State Constitution to emphasize that the Governor is required to submit a budget that is balanced on a cash basis rather than an accrual basis. Senate Bill 1 emphasizes the "cash" nature of the state's balanced budget requirement by changing the term "expenditures" to "disbursements" in two places; by changing the term "revenues" to "receipts" in two places; and by changing the reference to the use of moneys other than receipts for budget balancing purposes from "all moneys . . . estimated to be available therefor" to "all moneys available and anticipated to be available . . . therefor." Comments: This seems to be a clarification of the fact that the Constitution requires the Governor to propose a budget that is balanced on a cash basis. This allows the state to use reserves and other one-shots (i.e., "moneys" as opposed to "revenues" or "receipts") in balancing its budget. The proposed changes are not necessary to ensure this meaning.

4. Senate Bill 1, if approved by the voters in November 2005, would amend Article 7, Section 3 of the State Constitution to change the deadline for the submission by the Governor of amendments to the Executive Budget and the accompanying bills without the consent of the Legislature from 30 days to 21 days. Comments: This represents a slight acceleration of the budget process timetable. This change might not have much of a positive impact on the budget process but it also does not seem to do any harm to the process.

5. Senate Bill 1, if approved by the voters in November 2005, would amend Article 7, Section 4 of the State Constitution to

a. provide that except for a bill making appropriations for debt service, no appropriations bills submitted by the Governor and passed by both houses of the Legislature shall become law until either (a) all of the non-debt-service appropriations bills submitted by the Governor “have been voted on by both houses before the beginning of the fiscal year,” or (b) the legislature has passed a multiple appropriations bill ending a contingency period.

Note: A later section of Senate Bill 1 sets forth the process by which (i) a contingency period begins, (ii) a contingency budget takes effect, and (iii) the Legislature may end a contingency period by the passage of a multiple appropriation bill altering the contingency budget.

b. prohibit the legislature from acting on any appropriations bills submitted by the governor, other than a bill making appropriations for debt service, after the beginning of the fiscal year.

6. Senate Bill 1, if approved by the voters in November 2005, would amend Article 7, Section 5 of the State Constitution to provide that

a. a contingency budget “as provided for in statute” shall take effect on the first day of any fiscal year “in the event that the legislature has not finally acted upon all the appropriations bills submitted by the governor for such fiscal year.”

b. the legislature may consider and adopt alterations to the contingency budget through the passage by both houses of a single multiple appropriation bill; and that the passage by both houses of such a bill shall constitute the end of the contingency period. Note: A later section of Senate Bill 1 provides that the Governor can line item veto changes that such a multiple appropriations bill makes in the contingency budget. That section also specifies that the Governor can not line item veto “unaltered provisions contained within the multiple appropriations bill . . . that were originally included in the contingency budget, which shall remain law upon passage of such multiple appropriations bill.” But this means that the Governor can line item veto any addition over the amount in the contingency budget even if that addition still results in an appropriation that is less than what the Governor originally proposed in the appropriations bills accompanying the Executive Budget. This is a major change from the current situation in which the Governor can only line item veto amounts over and above what he initially proposed.

c. after the end of the contingency period, the legislature may “propose and consider a subsequent supplemental appropriation bill, or separate individual appropriation bill or bills...”

d. “except as otherwise provided by statute,” (i) the contingency budget shall provide the same appropriations and reappropriations as enacted for the immediately preceding fiscal year, and (ii) spending and revenue provisions in effect for the immediately preceding fiscal year shall remain in effect until the conclusion of the contingency period.

e. “except as otherwise provided in statute,” aggregate disbursements authorized by appropriations and reappropriations contained in the contingency budget for the fiscal year shall not exceed aggregate disbursements made in the immediately preceding fiscal year. Comments: This requirement is repeated in the proposed implementing legislation, Senate Bill 2, but that proposed implementing legislation adds the following additional limitations: (i) disbursements authorized by individual items of appropriation and reappropriation in the contingency budget shall not exceed disbursements made for such individual items of appropriation and reappropriation in the immediately preceding fiscal year, with certain specified exceptions; and (ii) if the new Independent Budget office (IBO), which is created by another section of this bill, determines that “annual receipts are insufficient to meet annual disbursements under the contingency budget, uniform reductions shall be applied to all disbursements other than those same specified exceptions.

f. No law modifying the disbursements authorized by appropriations and reappropriations contained in the contingency budget may become effective until three years from the date of its enactment. Comments: This is written in a problematical way. This three year waiting period is intended to apply to general laws governing the disbursements that may be made while a contingency budget is in effect. But it is written in such a way that it could be interpreted by a court to apply to any law modifying the disbursements authorized by a contingency budget which would include the multiple appropriations bill that the Legislature is authorized to pass to end the contingency period particularly since a later section of Senate Bill 1 makes clear that the “unaltered provisions contained within the multiple appropriations bill . . . that were originally included in the contingency budget, . . . shall remain law upon passage of such multiple appropriations bill.”

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Part C. The S1/S2 reform package is based on the following interrelated concepts:

1. The driving force behind the S1/S2 package is a desire to eliminate the uncertainty that currently exists when the Governor and the Legislature do not reach an agreement on the state budget by the beginning of the state fiscal year. The S1/S2 package would eliminate this uncertainty by providing that a “contingency budget” will take effect on the first day of any fiscal year “if the legislature has not finally acted upon all the appropriations bills submitted by the governor for such fiscal year.”

2. The design of the S1/S2 package is then designed on the basis of a firmly held but extremely wrong-headed belief that the contingency budget should be so unacceptable that none of the parties would be willing to live with it for very long. Under S1 and S2, the contingency budget would basically authorize the prior year’s level of spending both overall and for individual items of appropriation, with certain specified exceptions. This will supposedly create an incentive for the Governor and the Legislature to reach an agreement on an acceptable budget package before

the start of the fiscal year. And, if that does not happen, it will create an incentive for the Senate and the Assembly to promptly reach an agreement on “a multiple appropriation bill altering the contingency budget,” which is the mechanism that the S1/S2 package provides for ending a contingency period.

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Part D. What’s wrong with the S1/S2 approach?

First, the S1/S2 package does not assign responsibility to any individual or office for preparing the contingency budget, let alone for preparing it in a timely fashion so that its implications are clear well before it would take effect.

Second, under the S1/S2 package as currently written, the preparation of the contingency budget is not a simple, straightforward exercise. Rather, whoever is authorized to prepare this document would be required to make a significant number of judgment calls. For example, S2 provides that the contingency budget shall not authorize disbursements for items from the prior year that were “one-time or non-recurring in nature.”

Third, the S1/S2 package creates a contingency budget that addresses some parties’ potential concerns much more than it addresses other parties’ potential concerns. This serves to undercut the reasoning behind the package that the contingency budget should be unacceptable to all parties thus ensuring that none of the parties would be willing to live with it for a full fiscal year. But, for example, the implementing legislation part of the package (S2) empowers a new Independent Budget Office to apply uniform reductions to all disbursements other than public assistance payments and “federal funds for which receipts would be jeopardized or federal law would be violated if subject to such disbursement limitation” if this office projects that “annual receipts are insufficient to meet annual disbursements under the contingency budget.” In certain situations, such an administrative action by a legislative staff agency (if constitutional) would make the contingency budget more rather than less palatable to some parties.

Fourth, this concept of administratively imposed across-the-board cuts is unprecedented. Only two states (Rhode Island and Wisconsin) have contingency budget mechanisms similar to that which is being proposed in the S1/S2 package. In neither of these states nor in New York City which also has a version of this approach, is there any provision for an administrative reduction of the kind authorized by S2.

Fourth, the S1/S2 package leaves the contingency budget open to manipulation by the Executive branch by providing that disbursements cannot exceed the prior year’s disbursements. In closing out the 2002-03 fiscal year, the Governor decided to defer \$1.9 billion of 2002-03 disbursements until the 2003-04 fiscal year. The result of this action is that 2002-03 disbursements were artificially deflated by \$1.9 billion and 2003-04 disbursements were artificially inflated by \$1.9 billion. On paper, General Fund disbursements, including transfers to other funds, went from \$37.6 billion in 2002-03 to \$42.1 billion in 2003-04. But adjusting for the \$1.9 billion shift,

2002-03 disbursements were really \$38.5 billion. If the proposed constitutional amendment had been in place at this time, and if a “contingency budget” of the type envisioned by the S1?S2 package had been the outcome of that year’s budget process, spending for state operations and aid to localities in 2003-04 would have had to have been cut by \$4.5 billion even though the actual spending levels for 2003-04 were not sufficient to maintain current services in most areas of the state budget. (Neither New York City nor either of the states with contingency budget mechanisms of this type have any provision for tying the contingency budget to the prior year’s disbursements.)

Fifth, the implementing legislation provides that disbursements shall be capped at the “item of appropriations” level as well as at the aggregate level. As far as I know, no tracking of disbursements exists at the item of appropriation level given the extensive system of interchanges and transfers of appropriations authority that exists in New York State

Sixth, while additions to the Governor’s budget under the current constitutional framework are subject to line item veto by the Governor, just as additions to the contingency budget would be, the “default” situation under the proposed framework (i.e., the contingency budget) might be more acceptable as the final outcome of a particular year’s budget negotiations than the “default” situation under the current framework (i.e., a budget impasse during which government operations are funded with temporary appropriations bills until an agreement can be reached.)

Seventh, there is an inconsistency between the constitutional amendment (S1) and the implementing legislation (S2) in regard to the use of “moneys,” in addition to “receipts” in balancing the state’s budget. The proposed constitutional amendment includes changes in Article 7, Section 2 of the State Constitution that emphasize that the Governor is required to submit a budget that is balanced on a cash basis rather than an accrual basis. It does this by changing the term "expenditures" to "disbursements" in two places; by changing the term "revenues" to "receipts" in two places; and by changing the reference to the use of moneys other than receipts for budget balancing purposes from "all moneys . . . estimated to be available therefor" to "all moneys available and anticipated to be available . . . therefor." The proposed implementing legislation, on the other hand, requires disbursements to be reduced across the board (with the two exceptions noted above) if “annual receipts are insufficient to meet annual disbursements under the contingency budget.”